

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

76-1380

To be argued by
HAL MEYERSON, ESQUIRE

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee, : Index Number 76-1380

vs. :

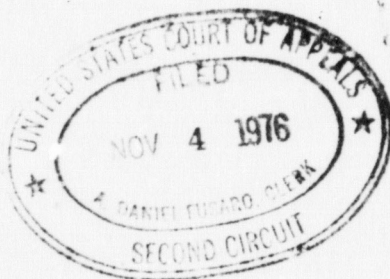
JACK MIRENDA,

: BRIEF FOR
: DEFENDANT-APPELLANT

Defendant-Appellant. :
-----X

ANDER'S BRIEF

On Appeal from the United States District Court
for the Eastern District of New York



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PRELIMINARY STATEMENT

The defendant-appellant, JACK MIRENDA, was indicted in a three count indictment charging him with violations of 18 U.S.C. §472, 473 and 371, charging, in substance, that Jack Mirenda, Robert Mirenda, Barton Jannuzzi and one Jane Doe conspired and did, in fact, knowingly possess and transfer approximately fifty (50) counterfeit One Hundred (\$100) Dollar Federal Reserve Notes. On March 15, 1976, the defendant and his son, Robert Mirenda, went on trial before Honorable Orrin Judd, now deceased. On March 18, 1976, the trial was declared a mistrial because of the failure of the jury to agree on a verdict. On May 12, 1976, the defendant and his son were again tried before Honorable Thomas Platt. During the trial, Robert Mirenda pled guilty to one count of the indictment. Jack Mirenda was convicted after trial on May 17, 1976.

On July 23, 1976, the appellant was sentenced on each count to a prison term of 18 months to be served concurrently under 4502(b)(2). On the same day, he filed a notice of appeal, appealing the aforesaid conviction and sentence.

STATEMENT OF FACTS

The main witness for the Government was Drug Enforcement Administration Agent Gerald Hochman. He testified that on May 7, 1975, there was a telephone conversation between one Barton Jannuzzi and Gerald Hochman, acting in an undercover capacity. During the course of this phone conversation, Mr. Jannuzzi represented to Mr. Hochman that he had available a quantity of counterfeit United States Reserve Notes available for sale to this undercover agent. Also, definite arrangements were made for the sale of \$5,000 in bogus Federal Reserve Notes.

A few days later, on May 9, 1975, there were other conversations between Mr. Jannuzzi and undercover agent Hochman. During those conversations, Mr. Jannuzzi attempted to set up a definite date for the sale of these Federal Reserve Notes. In the course of that discussion, he mentioned that the source of the notes was his friend Bucky's uncle "Jacky".

Agent Hochman stated that on May 12, 1975, there were further conversations between Mr. Jannuzzi and him. Mr. Jannuzzi asked the undercover agent to meet him in front of a bar in lower Manhattan. Taped conversations of the aforesaid conversations were introduced into evidence which confirmed Mr. Hochman's testimony. These tapes were made on the consent of Hochman, one of the parties to the conversation.

As a result of these conversations, agent Hochman followed the instructions of Jannuzzi and met him in front of that

bar on the evening of May 12, 1975. At that time, Mr. Jannuzzi introduced the undercover agent to the defendant, Robert Mirenda, whom Hochman understood to be Jannuzzi's friend Bucky.

Robert Mirenda then drove an automobile belonging to Mr. Jannuzzi, a Pontiac Grand Prix, and led Mr. Jannuzzi, who was then riding in an automobile with the undercover agent, to a location in Brooklyn, New York. After they arrived at that location in Brooklyn, New York, agent Hochman testified that the defendant, Jack Mirenda, approached the vehicle occupied by the undercover agent and that he was in the company of a person known only as Jane Doe. Jane Doe and Jack Mirenda came into the automobile. She instructed the undercover agent to proceed to another location in Brooklyn on Flatbush Avenue. When they arrived at that location, Jane Doe left the car, was observed crossing the street and going to another location. A short while later, Jack Mirenda left the car, and shortly thereafter, returned to the automobile and gave the counterfeit currency to the undercover agent in exchange for a quantity of money that Hochman had given in advance to Jane Doe.

Also testifying for the Government was James Heavey, an agent of the United States Secret Service and assistant special agent in charge, supervisor of the counterfeit squad.

Agent Heavey testified that he and a team of agents were part of a surveillance team on the night of May 12, 1975, the date of the transfer of the counterfeit money. He testified that while in the area of Flatbush Avenue near Ditmars Street, in Brooklyn, he observed a Grand Prix Pontiac proceeding on

Flatbush Avenue towards Manhattan. He was in a government car and had the driver follow the Grand Prix, and, at times, pulled parallel to the Grand Prix. Agent Heavey identified Barton Januzzi, Robert Mirenda, and the defendant, Jack Mirenda, as the individuals in the car.

There were no witnesses for the defense. The defense, as brought out by cross-examination and summation, was that Jack Mirenda was not the "source" of the counterfeit money referred to on the consent tapes admitted in evidence, and that Jack Mirenda was not the individual participating in the transfer of the counterfeit notes on May 12, 1975. In essence, the defense was one of mistaken identification.

Cross-examination of Agent Hochman elicited that, Jack Mirenda was Robert Mirenda's father and not his uncle, that his view of the man he identified as the defendant only lasted approximately five minutes.

Cross-examination of Agent Heavey was directed at the fact that his view of the man he identified as Jack Mirenda was only a side view and lasted only a short time, that there was no lineup, and that his identification occurred after he was informed by other agents that Jack Mirenda had already been arrested as the third man in the transfer of the counterfeit notes.

On the basis of all of the above facts, Jack Mirenda urges this Court to reverse the judgment of conviction and sentence previously entered pursuant to Anders v. California.

Respectfully submitted,

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